



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

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ENERGY

IN THE MATTER OF THE APPEAL OF JERSEY)
CENTRAL POWER & LIGHT COMPANY PURSUANT)
TO N.J.S.A. 40:55D-19 FROM A DECISION OF THE)
TOWNSHIP OF TEWKSBURY LAND USE BOARD)
DENYING AN APPLICATION FOR PRELIMINARY)
AND FINAL SITE PLAN APPROVAL AND VARIANCES)
IN CONNECTION WITH THE CONSTRUCTION OF)
A 230 kV/12.5 kV SUBSTATION)

ORDER DENYING
INTERVENORS' MOTION
FOR RECONSIDERATION

DOCKET No. EO09010010

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BY THE BOARD:

This matter comes before the Board of Public Utilities ("Board") on Motions for Reconsideration filed by Tewksbury Township and the Tewksbury Land Use Board (collectively "Tewksbury") and the Friends of the Fairmount Historic District ("FFHD"). Each Motion seeks reconsideration of the Board's September 14, 2009 Decision and Order ("Order") granting the Petition of Jersey Central Power & Light Company ("JCP&L," "Petitioner," or "Company") under N.J.S.A. 40:55D-19.

Procedural History / Background

On June 5, 2005, the Tewksbury Board of Adjustment denied a JCP&L application for authority to install a substation on Rockaway Road in Tewksbury. Subsequently, the Company reassessed the capacity and reliability issues in the Tewksbury area. Thereafter, on November

15, 2007, JCP&L filed a second application with the Tewksbury Land Use Board for preliminary and final site plan approval and for a number of variances under the Land Use Ordinance of the Township of Tewksbury for a proposed substation at 2 Fox Hill Road in Tewksbury ("Property"). After sixteen hearings, at its meeting on December 3, 2008, Tewksbury denied the requested approval and variances, leading JCP&L to file a Petition with the Board on January 7, 2009 pursuant to N.J.S.A. 40:55d-19. On February 18, 2009, Tewksbury issued its written Resolution memorializing the action taken at its December 3, 2008 meeting ("Resolution #09-06").

On January 13, 2009, the FFHD, which is an unincorporated association of homeowners near the proposed Substation, sought to participate in these proceedings. On February 19, 2009, Tewksbury filed an Answer to JCP&L's Petition.

On April 27, 2009, the Board issued a Prehearing Order granting intervention to Tewksbury and the FFHD, among other things. An evidentiary hearing was held in the Board's hearing room in Newark on June 17, 2009 before Commissioner Elizabeth Randall. A public hearing was held on June 24, 2009 at the Old Turnpike School in Califon, New Jersey before presiding hearing officer Suzanne N. Patnaude, the Board's Deputy Chief Counsel.

At its August 19, 2009 agenda meeting, the Board considered this matter and determined that, in accordance with N.J.S.A. 40:55D-19, the proposed Substation on the Property is reasonably necessary for the service, convenience, and welfare of the public in order to enable the Petitioner to continue to provide safe, adequate, and reliable service to its customers; that Petitioner should be able to construct, install, and operate the Substation, as proposed, without further Order of the Board; and that the Local Land Use and Zoning Ordinances, and any other Ordinance, rule or regulation promulgated under the auspices of the Municipal Land Use Act of the State of New Jersey shall not apply to the construction, installation, and operation of the Substation.

Thus, the Board ordered that neither N.J.S.A. 40:55D-1 et seq., nor any other governmental ordinances or regulations, permits or license requirements made under the authority of N.J.S.A. 40:55D-1 et seq. shall apply to the siting, installation, construction, or operation of the proposed Substation. The Board further ordered that JCP&L work with the appropriate officials in Tewksbury, as well as the residents of two flag lots that share a common driveway immediately adjacent to the Property, to construct an emergency walking path that will be adequate to ensure that, in the unlikely event of a fire or other emergency, those residents will have an additional escape route in the opposite direction of the Substation, should those residents desire such path. The Board also ordered that JCP&L continue to work with the appropriate fire and safety officials in Tewksbury and the surrounding community to ensure that both they and JCP&L have adequate equipment and training in the event of an emergency.

Finally, the Board ordered JCP&L to construct and maintain adequate screening, as proposed, to minimize the visual impact of the Substation, but also that JCP&L work with the appropriate Tewksbury officials and residents in an attempt to explore and develop reasonable screening alternatives upon which the parties can amicably agree.

To these ends, the Board ordered that JCP&L work with the appropriate officials and residents to develop reasonable plans that the parties can amicably agree upon for each of these conditions. Such plans were to be submitted to the Board within thirty days of the date of the Board's Order. If no agreed upon plans are submitted to the Board, then the Board ordered JCP&L proceed with screening as proposed in its Petition and that it continue to work with the appropriate fire and safety officials to ensure they have adequate equipment and training.

On September 14, 2009, the Board executed its Decision and Order memorializing the Board's decision at the August 19, 2009 agenda meeting (hereinafter referred to as "Order").

Thereafter, on September 30, 2009, Tewksbury and the FFHD filed Motions for Reconsideration of the Board's Order. Additionally, each party sought an "extension" of the thirty-day time period to submit alternative agreed upon plans for each condition.

FFHD Motion for Reconsideration

The FFHD Motion for Reconsideration alleges that the Board made twelve errors of fact or law which should result in a reversal of the Board's Order, each of which are summarized below:

- 1) The Board erred in its description of the Property because a) the dimensions of the transformer noted in the Order differ from the dimensions noted in a previous plan entitled "Equipment Elevations Diagram," and b) the Board did not note all of the structures that would be included as part of the proposed Substation.
- 2) The Board erred as a matter of law by giving any consideration to JCP&L's previous application to install a substation on Rockaway Road in Tewksbury.
- 3) The Board did not give adequate weight to a letter submitted to the Board by the Tewksbury First Aid and Rescue Squad as a public comment, and that the Board should have made that letter the subject of additional testimony.
- 4) The Board incorrectly applied several of the legal principles established in In Re Public Service Electric & Co., 35 N.J. 368 (1961), including: a) the Board incorrectly concluded that the FFHD and Tewksbury were the only "interested groups" affected by the Substation, b) the Board failed to give any weight to the Tewksbury Land Use Board's findings, and c) the Board incorrectly applied the balancing of interests in light of the facts.
- 5) The Board should reconsider its decision because it mischaracterized the FFHD's post-hearing brief argument when it stated in its Order that the FFHD argued that *the principle* purpose of the Substation was to relieve the Chester substation, rather than *one of the principle* purposes (emphasis added).
- 6) The Board incorrectly concluded that JCP&L's site selection criteria gave adequate weight to environmental and community impacts.
- 7) The Board's findings with respect to JCP&L's alternative site analysis were incorrect and not supported by the record because no evidence was introduced to suggest that JCP&L formally tried to engage Tewksbury for the potential purchase of Green Acres encumbered property, and because there is testimony from the Chairman of the Tewksbury Land Use Board at the Land Use Board hearings wherein he commends JCP&L's hard work and urges them to consider alternatives and work with the Township committee.
- 8) The Board's findings with respect to the Cleveland Industrial Park alternative site were flawed because "there was lengthy testimony" before the Land Use Board indicating that

this site was superior to the proposed Property. The FFHD argue that they met their burden of producing reasonable alternative sites beyond those brought forward by JCP&L and that, therefore, "further analysis and testimony should be given to it." (FFHD Motion at 12).

- 9) The Board misunderstood the arguments with respect to fire safety and the application of the DCA Firefighter's Handbook and the IEEE Standards for substation locations. The Board also should have given more weight to the Public Service Electric & Gas Company ("PSE&G") Standard Operating Procedure Guidelines that were submitted as a part of the Tewksbury First Aid & Rescue Squad's public comment letter, and later sent to the Board to be made part of the record.
- 10) The Board incorrectly concluded that JCP&L addressed the concerns of the Tewksbury Fire Chief, Chief Steinel. Here, the FFHD argue that the Board did not take into consideration certain portions of Chief Steinel's testimony before the Land Use Board.
- 11) The Board misunderstood the record with respect to buffers and visual screens because:
 - a) the hard screen wall proposed by JCP&L in response to a suggestion by the Land Use Board was not in character with the surrounding neighborhood, and b) there are pieces of equipment, in addition to the dead end structure, that would make it difficult to screen the Substation in its entirety.
- 12) The Board erred in deciding this matter before the Highlands Council approved JCP&L's landscaping plan at the Property. Additionally, the FFHD note certain language from the New Jersey Department of Environmental Protection ("NJDEP") Amended and Conditional Highlands Exemption Letter which states that the Highlands exemption is limited to the replacement or rehabilitation or upgrade of existing infrastructure and that, in the event the Board determines the Substation is not necessary, the Highlands exemption is null and void.

Tewksbury Motion for Reconsideration

Tewksbury generally supports the FFHD's Motion for Reconsideration. Tewksbury additionally argues that the Board inappropriately determined that the burden was on the Township and the FFHD to produce alternative sites. Lastly, Tewksbury argues that the Board incorrectly suggested that the Township was "being difficult and were simply attempting to banish JCP&L." (Tewksbury Motion at 2).

JCP&L Response to Motions for Reconsideration

JCP&L preliminarily argues that the Motions merely attempt to re-litigate this matter, and that the Board disagreed with the arguments of the parties does not necessarily constitute an error of fact or law. Further, JCP&L relies on In Re Pfizer's Estate v. Teeter, 6 N.J. 233, 239 (1951) for the principle that a motion for reconsideration cannot serve as an after-the-fact means of introducing new testimony that should have been presented during the proceeding. JCP&L then goes on to refute each of the twelve arguments put forth by the FFHD, which are discussed in turn.

JCP&L argues that, contrary to the FFHD's assertions, the Board's Order did not reflect a fundamental misunderstanding of the proposed project, and that the measurements of the transformer of the Substation were correctly cited by the Board. It goes on to state that the Board Order need not detail the dimensions of every component of the Substation.

JCP&L argues that the Board's references to JCP&L's prior application for a substation at Rockaway Road merely demonstrate that JCP&L has been attempting to resolve electric service problems in Tewksbury for many years.

With respect to the letter submitted by the Chief of the Tewksbury First Aid & Rescue Squad, JCP&L argues that the letter does not constitute substantial evidence on which the Board may make a decision because the Chief was not a witness providing sworn testimony and subject to cross-examination, and because the letter was never formally submitted during the evidentiary hearing. JCP&L further argues that the FFHD's suggestion that the burden was somehow on the Board to review the letter, to provide it to the parties, and to request additional discovery defies logic, since it is the parties burden to submit evidence. JCP&L also disputes the merits of the letter and claims there is no need for any additional testimony concerning the letter.

JCP&L claims the FFHD's argument that the Board incorrectly applied the legal principles established in In Re Public Service Electric & Co., 35 N.J. 368 (1961) is also without merit. Specifically, JCP&L claims that the FFHD's contention that the Board did not consider the broader public interest with respect to the fact that the Property is on an scenic road in and an historic district is entirely without merit, since those who benefit from such designations are primarily local residents and because the Board's Order did, in fact, consider those interests in making its determination. Additionally, JCP&L contends that the Board made it clear in its Order that it did consider the findings of the Tewksbury Land Use Board and the community zoning plan. Lastly, JCP&L claims the FFHD's argument that the Board misapplied the balancing test required by In Re Public Service is merely a "circular tautology" because, under their argument, the only way the balancing test could have appropriately been applied is if the Board rejected the Petition.

With respect to the FFHD's contention that the Board should reconsider its decision because the Order states that the FFHD argued that the principle reason for the proposed Substation was to relieve the Chester substation, rather than one of the principle reasons, JCP&L urges that this minor distinction is immaterial to the Board's ultimate determination and should be summarily dismissed.

Next, JCP&L suggests that, contrary to what the FFHD have put forth, the Board did consider the community and environmental impacts of the proposed Substation on the Property. JCP&L further contends that the Company has no obligation to seek a Green Acres diversion for Township owned properties, and has no standing to do so regardless. Nevertheless, JCP&L did attempt to explore these issues with the Tewksbury.

JCP&L argues that the FFHD the Board did consider the Cleveland Industrial Park site, and the FFHD merely chose to ignore the record evidence demonstrating that this site was not suitable.

JCP&L notes that the Board's Order was sensitive to fire and safety issues and that the IEEE Standards relied upon by JCP&L and the Board do, indirectly, involve the siting of the substation. They further contend that the PSE&G guidelines are not controlling, and in any event, the Company is not familiar with them. Also, JCP&L argues that, contrary to the assertions of the FFHD, the Board appropriately took into consideration the entirety of Chief

Steinel's testimony before the Land Use Board, and his recommendation that there be some type of emergency exit.

JCP&L finally argues that resolution of any landscaping or screening plan before the Highlands Council is not germane to the present matter before the Board and that it would be poor public policy for the Board to defer its decision in this matter pending the outcome of any other approvals or permits needed for this project.

Discussion

• FFHD Motion for Reconsideration

The FFHD's first argument that the description of the dimensions of the Substation in the Board Order is inaccurate is without merit. The FFHD believe that, to the extent the Board determined that screening methods can be reasonably effective, the inaccurate description is an error requiring reconsideration. The FFHD rely on a document, without citation to where the document can be found in the record, entitled "Equipment Elevations Diagram" dated and updated before the Petition in this matter was filed, and claim that according to that document the height of the transformer is 19 feet high and not 12 feet high.

The Board adequately and accurately described the proposed Substation. To be clear, the Board has no obligation to spell out every detail of the proposed Substation plans. Nevertheless, here, the Board Order stated that the Substation will consist of a "65-foot dead-end structure, one 14 MVA, 230 kV to 12.5 kV power transformer measuring 12-feet high, 19-feet wide, and 12-feet deep, installed on a concrete foundation with associated switchgear, bushings, circuit breakers, switches and other miscellaneous equipment." By this description it is clear that the Board had an understanding of the components of the project. Additionally, the dimensions listed by the Board are those that are reflected in Exhibit JCSUB-2R. Thus, the Board is not persuaded by the FFHD's criticism of the Board's description. The plan cited by the FFHD, in any event, is dated before the Petition in this matter was filed. The Board was correct in relying on the dimensions submitted in the testimony of JCP&L's witness in this matter.

Secondly, the FFHD's argument that more weight should have been given to the Tewksbury First Aid & Rescue Squad's letter submitted to the Board as a public comment is without merit. The Tewksbury First Aid & Rescue Squad did not participate in this proceeding and submitted no sworn testimony. In fact, neither Tewksbury nor the FFHD presented any witnesses on the issue of safety. Thus, the Board appropriately relied on the sworn testimony before the Tewksbury Land Use Board of Fire Chief Steinel, who was questioned by several Land Use Board members and counsel. Also, the FFHD claim that the Board should have provided the letter to JCP&L and requested comments and discovery on it. It is a party's obligation, however, to submit evidence supporting their position in the appropriate manner. Certainly, the Board does not have the obligation of providing public comments to other parties and ordering additional discovery. Nevertheless, the Board did consider the letter as a public comment and gave it the weight it deserved. The Board appropriately placed substantial weight on the testimony of Chief Steinel, since he was the only witness to provide sworn testimony and be subject to cross-examination with respect to fire and safety issues.

The Board disagrees with the FFHD's argument with respect to the principles established in In Re Public Service Electric & Co., 35 N.J. 368 (1961) including 1) that the Board incorrectly concluded that the FFHD and Tewksbury were the only "interest groups" affected by the Substation, 2) that the Board failed to give any weight to the Tewksbury Land Use Board's findings, and 3) that the Board incorrectly applied the balancing of the interests in light of all of the facts. The Board was aware of, and took into consideration, the significance of the Property's location in an historic district and on a scenic road. That those designations are of regional, and perhaps national significance, was certainly not overlooked by the Board and the Board did not make a specific determination concluding that the only "interested groups" were the FFHD and Tewksbury.

The claim that the Board did not give weight to the Tewksbury Land Use Board's findings has been a recurring argument of the FFHD and has been repeatedly addressed by the Board. As set out by In Re Public Service, the Board must consider the community zoning plan when making its determination. The Board Order made clear it took into consideration the community zoning plan. The Board was aware that the community is in an historic district on a scenic road, and that due to Tewksbury's land use regulations, future growth in the area is limited. Here, however, the Board noted that there is a current need for additional capacity in Tewksbury, not a future need. Additionally, it considered and, especially with respect to safety issues, relied upon the testimony submitted before the Tewksbury Land Use Board. Further, the community zoning plan is only one of five factors that the Board must take into consideration when applying the principles established in In Re Public Service. The Board took each factor into consideration when making its decision, not only the community zoning plan. The fact that the FFHD would prefer to overlook many of the other factors, or place less weight on them, is not a reason for the Board to reconsider its decision, as the Board's responsibility is to ensure reliable electric service to the region.

The FFHD's argument that the Board should reconsider its decision because it mischaracterized the FFHD's post-hearing brief argument when it stated in its Order that the FFHD argued that *the principle* purpose of the Substation was to relieve the Chester substation, rather than *one of the principle* purposes lacks any merit whatsoever. This argument does not merit consideration, as there is no rational reason to believe that such a trivial distinction is material to the Board's decision.

Likewise, the same is true for the argument that JCP&L's alternative site analysis was not supported by the record. First, JCP&L had no obligation to formally engage Tewksbury seeking a diversion and the testimony presented by JCP&L witness Thomas Walker does, in fact, support the contention made by the Board in its Order. That contention was merely that the Township declined to make its encumbered property available to the Company.

Secondly, that the Board did not note in its Order that, immediately after voting against the project, one of the Land Use Board member's (Mr. Johnstone) testimony commends the Company's hard work and states that he is not against a substation in Tewksbury but just at this location, is not a material fact for reconsideration. Furthermore, the FFHD's argument here is fundamentally flawed. Mr. Johnstone's testimony highlighted by the FFHD suggests that the Company should have discussed alternative sites with the Township after the Land Use Board's denial. Mr. Walker's testimony, however, clearly indicated that the Company did approach the Township after the Land Use Board's decision, and that "at that time Tewksbury was not willing to offer up those lands for purchase or interested in changing the deed restriction or doing a trade-off." (Hearing transcript at 67:6-22).

The FFHD contend that the Board's findings with respect to the Cleveland Industrial Park alternative site were flawed because "there was lengthy testimony" before the Land Use Board indicating that this site was superior to the proposed Property, without citation to the testimony. The Board did consider the evidence submitted with respect to this site and found JCP&L's testimony that it would require thousands of feet of transmission conductors and steel poles to be significant. The Board even noted in its Order the preference for shorter lengths of lines and poles, both to increase system reliability and reduce community impacts (September 14 Order at 12).

The FFHD then argue that the Board misunderstood the arguments with respect to fire safety and the application of the DCA Firefighter's Handbook and the IEEE Standards for substation locations. They contend that the Board should have given more weight to the PSE&G Standard Operating Procedure Guidelines that were submitted as a part of the Tewksbury First Aid & Rescue Squad's public comment letter and later "sent to the Board on July 1, 2009 to be made part of the record." (FFHD Motion at 14). First, the Board relied on the evidence before it when making its determination with respect to fire and safety. Although admittedly not mandatory, the IEEE Standards do indirectly address siting of substations, in that, as identified by the FFHD, it provides guidance with respect to design and construction of substations for fire safety. JCP&L's proposed substation design appears to be within those guidelines.

The FFHD also point out that the measurements provided in the Board Order demonstrate the distance of only the transformer to the nearest homes, and not other equipment within the substation, such as the circuit breaker. The FFHD argue, therefore, that applying the DCA Firefighter's Handbook standards, the nearest home is 267 feet from the property line, which is 33 feet less than the 300 foot safety zone pending the substation being de-energized. The Board notes that the equipment of primary concern in the case of an emergency is the transformer. Thus, even taking into consideration the DCA standard, the measurement should be from the transformer, and not from the property line. The FFHD, however, importantly neglect that the substation can be de-energized remotely, likely within minutes of an emergency.

The FFHD argue that JCP&L failed to address the PSE&G guidelines used for siting substations that were provided as an attachment to the public comment submitted by the Tewksbury First Aid & Rescue Squad. JCP&L rebuts this argument because they are not familiar with the guidelines and, in any event, other utility company's guidelines are not controlling on JCP&L. JCP&L's argument is persuasive. While the PSE&G guidelines may provide a useful guide, since PSE&G provides the most reliable service in the state, they are not controlling on JCP&L. The Board did, however, did take them into consideration to the extent they are relevant.

Next, the FFHD argue that the Board incorrectly concluded that JCP&L addressed the concerns of the Tewksbury Fire Chief, Chief Steinel. Here, the FFHD argue that the Board did not take into consideration certain portions of Chief Steinel's testimony before the Land Use Board. Specifically, the FFHD allege that the Board should reconsider its decision because the Chief Steinel never testified as to the adequacy of walking paths, as opposed to an emergency road. The testimony cited includes the following discussion (September 17, 2007 Transcript of Land Use Board Hearing at 46):

Mr. Johnstone: Let's assume for the sake of argument there will be a substation put there, is it your recommendation as the fire chief involved with this area that you would like to see a backside safety road put in to allow access by your trucks and or access exits for the homeowners?

The Witness: Yes.

This testimony indicates that it was Chief Steinel's recommendation that, if the Substation is constructed at the proposed Property, there should be an emergency road and/or access exits for the homeowners. To be clear, the Board took this into consideration when making its determination, as evidenced by its ordering JCP&L to construct an emergency walking path. To be sure that Chief Steinel's concerns are continually addressed, the Board took the added precaution of ordering JCP&L to continue to work the Tewksbury Fire Department to ensure they have adequate training and equipment. Additionally, the Board ordered that JCP&L work with the appropriate officials in Tewksbury, as well as the residents of the two flag lots, to construct emergency walking path, or another agreed upon plan to be submitted to the Board.

The Board again reiterates that, with respect to fire and safety issues, the FFHD and Tewksbury did not present a witness or sworn testimony of an expert, although they had the opportunity to do so. In an effort to ensure that these concerns were addressed appropriately, however, the Board placed considerable emphasis on the sworn testimony of Chief Steinel, the totality of which conveys that officials can and will be ready and prepared in the unlikely event of an emergency. Additionally, because of the importance of such concerns, after the filing of these Motions, the Board reviewed the record to ensure it had the appropriate information before it when it made its decision. After that review, it is clear that there is nothing new presented now that leads the Board to believe it did not consider the appropriate information.

The FFHD next argue that the Board misunderstood the record with respect to buffers and visual screens because the hard screen wall proposed by JCP&L in response to a suggestion by the Land Use Board was not in character with the surrounding neighborhood, and, contrary to the Board's Order, it was not proposed as part of the Company's initial presentations to the Land Use Board. This argument is without merit. Whether the offer to provide a hard screen wall was made at the initial presentation or at a later date, the Board was only making the observation that JCP&L offered both landscaping and other means to screen, to the extent possible. To the extent that the Board was mistaken as to the timing of the offer of a hard screen wall, it is irrelevant to the Board's ultimate decision to grant JCP&L's petition.

The FFHD also argue that there are pieces of equipment, in addition to the dead end structure, that would make it difficult to screen the Substation in its entirety. This issue was raised throughout the hearing. The Board made clear in its Order that it understood that not all of the Substation would be able to be screened visually, and its consideration of this issue is evidenced by its ordering JCP&L to work with the appropriate officials and residents to see if an agreeable screening plan can be reached, to the extent practicable. Thus, the Board need not revisit this argument, as it is precisely the same as was raised throughout this proceeding.

Lastly, the FFHD contend that the Board erred in deciding this matter before the Highlands Council approved JCP&L's landscaping plan at the Property. Additionally, the FFHD note certain language from the NJDEP Amended and Conditional Highlands Exemption Letter which states that the Highlands exemption is limited to the replacement or rehabilitation or upgrade of existing infrastructure and that, in the event the Board determines the Substation is not necessary, the Highlands exemption is null and void. The Board made clear in its Order that JCP&L is required to obtain all necessary approvals, permits, licenses, and certificates from the Highlands Council and the NJDEP. This would also include complying with any conditions in the NJDEP Amended and Conditional Highlands Exemption Letter. It is worth noting, however, as admitted by the FFHD, that the Board is under no obligation to wait for its sister agencies to rule on matters within their jurisdiction.

- **Tewksbury Motion for Reconsideration**

Tewksbury joins in the FFHD motion but states there may be other "errors" that warrant reversal of the Board's Order or a suspension of the decision pending a full-hearing. The Board notes that there was a full hearing in this matter, where the parties had the opportunity to introduce documents, present witnesses and cross-examine the witnesses of other parties, and submit post-hearing briefs.

Tewksbury then goes on to argue that the Township was not opposed to a substation in the community, as evidenced by Mr. Johnstone's testimony noted above. Tewksbury notes that the Municipal Land Use Law, including the section at issue in this proceeding, imposes a burden on JCP&L to explore alternatives. It is also noted that ultimately, an applicant before the Land Use Board bears the ultimate responsibility of satisfying this burden.

It appears that Tewksbury misunderstood the Board's application of the principles it identified from In Re Application of Hackensack Water Co., 41 N.J. Super 408, 426-427 (App. Div. 1956). That principle is that it is the burden of the objectors to bring forth additional alternative sites *beyond those brought forth by JCP&L*. In this matter, JCP&L looked at dozens of additional sites. This is not a matter where JCP&L did not meet its burden of searching for additional sites.

Discussion

A party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. E.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, supra, 242 N.J. Super. at 401.

Therefore, the Board will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law. Here, the Board does not believe that the arguments raised by Tewksbury or the FFHD are sufficient to warrant reconsideration or modification. Many of the allegations of error and incorrect conclusions are, essentially, reiterations of the arguments presented at the hearing and in post-hearing briefs. The other arguments put forth deal with minor language or descriptions contained in the Board Order, none of which rise to the level of materiality that warrant reconsideration. Nothing in the substantive arguments presented now rises to the level to convince the Board that its decision was fatally flawed or wrong. As such, the Board FINDS that the arguments do not rise to the level to require reconsideration or other modification of the Board's September 14, 2009 Decision and Order. Therefore, the Board HEREBY ORDERS that each of the Motions for Reconsideration be DENIED.


With respect to the request by the FFHD and Tewksbury to extend the thirty day time to reach amicable agreement on conditions, the Board notes that its September 14, 2009 Order was clear. That Order stated: " If no agreed upon plans are submitted to the Board, then the Board ORDERS that JCP&L proceed with screening as proposed in its Petition and that it continue to work with the appropriate fire and safety officials to ensure they have adequate equipment and training." (Order at 17).

The Board is not modifying any aspect of its prior Order; therefore, there is no extension of time for negotiating. However, as always, the Board strongly encourages the parties to continue to work with one another in good faith to settle these issues. Thus, while the Board reaffirms its Order that JCP&L can proceed with construction of the Substation at the Property, it also notes its support should the parties reach a settlement to locate the substation elsewhere or agree upon plans with respect to screening or the emergency path. To these ends, the Board ORDERS the parties to notify the Board of any such agreements.

DATED: 12/8/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

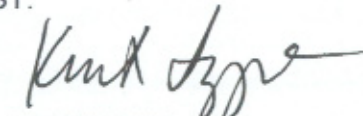

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COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


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COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

